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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

IN RE: 23ANDME, INC. CUSTOMER
 DATA SECURITY BREACH LITIGATION

Case No. 3:24-md-3098-EMC

**JOINT RESPONSE MEMORANDUM IN
 SUPPORT OF APPOINTING NORMAN
 E. SIEGEL, SABITA S. SONEJI, AND
 CARI CAMPEN LAUFENBERG AS
 INTERIM CO-LEAD COUNSEL**

Date: May 30, 2024
 Time: 1:30 pm
 Courtroom: 5, 17th Floor
 Judge: Edward M. Chen

1 Plaintiffs Michele Bacus, Claire Paddy, Neil Haven, and Camie Picha and their counsel
 2 submit this joint reply brief in support of their respective motions for appointment of Interim Co-
 3 Lead Counsel.¹ Counsel for these Plaintiffs—who did not coordinate the filing of their
 4 Complaints—have conferred after submission of their respective leadership motions and review
 5 of all the pending leadership motions, and they have agreed to seek appointment of a slate with
 6 Norman E. Siegel, Sabita S. Soneji, and Cari Campen Laufenberg co-leading this important
 7 litigation (“the SSL Slate”), with Mr. Siegel also serving as Settlement Counsel for an initial 45-
 8 day period to allow the negotiating parties to determine whether a settlement can be achieved.

9 While Plaintiff Bacus originally proposed that Hassan A. Zavareei be appointed Interim
 10 Co-Lead Counsel, we have conferred and agree that appointment of Ms. Soneji, who chairs Tycko
 11 & Zavareei’s Privacy and Data Breach Group, would strengthen the SSL Slate even further by
 12 adding California counsel who has an office in and regularly practices in this District. Ms. Soneji’s
 13 membership on the SSL Slate would allow her to make the most effective use of Tycko & Zavareei
 14 LLP’s resources to support this litigation and would supply additional expertise in practice before
 15 this Court. Ms. Soneji’s credentials, including the breadth of her experience in successfully leading
 16 complex data breach class actions, are discussed in detail in Plaintiff Bacus’ initial motion, Mr.
 17 Zavareei’s declaration, and the Firm Resume attached as an exhibit to the motion. *See In re*
 18 *23andMe, Inc.*, Case No. 3:24-MD-3098 (“*In re 23andMe*”), ECF Nos. 3 at 7-8; 4 ¶¶ 20-23; 4-1
 19 at 10. If Ms. Soneji is appointed to co-lead this litigation, Mr. Zavareei will remain heavily
 20 involved in a supporting role.

21 Among the many qualified movants, we respectfully submit that the SSL Slate is the best
 22 positioned to represent the class. *See* Fed. R. Civ. P. 23(g)(2) (“If more than one adequate applicant
 23 seeks appointment, the court must appoint the applicant best able to represent the interests of the
 24 class.”). The SSL Slate is carefully tailored to fit the needs of these consolidated proceedings,

26 ¹ Plaintiffs’ respective actions are *Bacus v. 23andMe*, No. 23-cv-16828 (N.D. Ill.), *Paddy v.*
 27 *23andMe, Inc.*, No. 3:23-cv-06698-EMC (N.D. Cal.), and *Picha v. 23andMe, Inc.*, No. 3:23-CV-
 06719 (N.D. Cal.).

evinces a compelling combination of leadership experience and results for data breach victims, makes available the resources and know-how of three well-established class action law firms, while proposing a lean leadership structure that aligns with the needs of this litigation in its current stage, and represents the diversity of the bar and the putative classes.

The SSL Slate’s structure and proposed trial plan also fit this case well. Appointing both Interim Co-Lead Counsel and Settlement Counsel is appropriate in this litigation. For the reasons detailed in Mr. Siegel’s leadership motion (including 23andMe’s precarious financial condition), we believe it is appropriate to establish an initial 45-day period to allow the parties to continue exploring whether a fair settlement can be reached. *See In re 23andMe*, ECF No. 22 at 1, 6-7. If appointed as Settlement Counsel, Mr. Siegel—who has been involved throughout the negotiation process to date and is well-qualified to lead these efforts—can provide continuity of the settlement discussions and focus on exploring a path forward with 23andMe during this time. *See id.* at 4-5 (discussing Mr. Siegel’s role in settlement discussions to date and the current state of those discussions). While the case plans initially proposed in the Zavareei and Laufenberg applications anticipated that discovery would commence immediately upon appointment of leadership, *see In re 23andME*, ECF No. 3-1 (Zavareei Case Plan); *id.*, ECF No. 19 at 7-9 (Laufenberg Case Plan), after considering Mr. Siegel’s leadership motion and further conferring, we believe that it would be best for discovery to commence after the 45-day negotiation period expires. This would reduce litigation expenses and thus preserve those funds for the Proposed Classes in the event of early resolution.

Although the SSL Slate would allow leadership to draw from the resources of three large firms, it offers a lean structure that is the best fit for this litigation in its current stage. Here, where there is a realistic prospect of early settlement, a streamlined structure comprising only three attorneys is in the best interests of the Proposed Classes because it will avoid the additional coordination work needed if many attorneys are involved in managing the litigation. *See, e.g., Brown v. Accellion, Inc.*, No. 5:21-CV-01155-EJD, 2023 WL 1930348, at *3 (N.D. Cal. Feb. 10, 2023) (“Because the parties have indicated that early settlement and class-wide resolution are real

possibilities, the Court finds that the class would be best served by a lean and efficient lead counsel arrangement, as opposed to a towering leadership structure with committees. . . .”). The SSL Slate will centralize coordination and management authority in three attorneys who have already demonstrated their ability to efficiently structure management of the litigation with their dual-track negotiation and consolidated-pleading plan.

Further, if the Court appoints the SSL Slate and accepts our proposal to allow a short negotiation period of 45 days, that plan will not delay the progress of this litigation because Ms. Soneji and Ms. Laufenberg would concurrently prepare a consolidated complaint for filing immediately upon expiration of the 45 days if a settlement cannot be reached. The SSL Slate thus offers the structure and resources to allow Plaintiffs to press forward on a dual-track basis. No other proposed leadership structure provides for dedicating one well-established and highly successful attorney and firm specifically designated to attend to continued early negotiations on behalf of the Proposed Classes, while concurrently marshaling the resources of two other experienced and successful attorneys and firms to prepare for litigation.

This proposed schedule also has the added benefit of preserving precious funds for the Proposed Classes. Permitting a 45-day negotiation period—during which discovery will not immediately commence—will preserve funds that 23andMe has available for litigation (for example, litigation insurance funds) that otherwise would be expended on discovery until it is determined whether early resolution is possible. This is a crucial consideration given 23andMe’s current financial condition. *See 23andMe*, ECF No. 22 at 2-3 (documenting 23andMe’s financial troubles).²

² In support of their leadership application, the *Melvin* plaintiffs cite a survey of putative class members in which they assert the surveyed group “prefer[s] a rigorous, in-court process to an early settlement.” *See Santana*, ECF No. 41 at 2. But we submit that developing a case plan based on such generalized views may not be the best strategy when the survey participants have not been provided the full context of any given case. Here, 23andMe’s financial condition is an important consideration bearing on the timing of settlement discussions. As detailed in Mr. Siegel’s application, because of 23andMe’s financial prospects, “an early resolution may be the only path forward for the proposed class.” *23andMe*, ECF No. 22 at 1. Moreover, early resolution can benefit class members in numerous ways, as long as early resolution is in their best interests and not in the interests of attorneys seeking quick payment. *See, e.g., In re M.D.C. Holdings Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) (discussing how an

1 Additionally, the SSL Slate presents a team of experienced, successful attorneys with an
 2 exceptional amount of experience in data breach cases. *See In re 23andMe*, ECF No. 3 at 5-8; *id.*,
 3 ECF No. 19 at 2-5; *id.*, ECF No. 22 at 7-12. No other proposed leadership structure proposes three
 4 co-leads who each have significant expertise in prosecuting data breach class actions—with each
 5 bringing with them the resources and skill of large, diverse law firms. Mr. Siegel, Ms. Soneji, and
 6 Ms. Laufenberg have collectively held leadership roles in nearly every major consumer data breach
 7 case on record—an unparalleled resume of efficient case management, collaboration, and (most
 8 importantly) results for the classes they have represented. *See id.*

9 Moreover, the SSL Slate adds meaningful diversity to their experience and successes. It
 10 brings together three individual applicants to form a collaborative team, each with diverse
 11 backgrounds, and each with the support of law firms offering a mosaic of perspectives, experience
 12 levels, and career histories. *See In re 23andMe*, ECF No. 3 at 11-12; *id.*, ECF No. 19 at 4-5; *id.*,
 13 ECF No. 22 at 12. Further, the SSL Slate includes representation by counsel from one of the Illinois
 14 actions (and is supported by counsel in the other Illinois action), counsel from two of the California
 15 actions, and counsel who is “at home” with their office in this District and who has significant
 16 experience practicing in this District. *See, e.g., In re 23andMe*, ECF No. 3 at 7, 9-11.

17 Each member of the SSL Slate has been deeply involved in the case from the start, investing
 18 considerable time, effort, and resources, including attending both mediation sessions. *See In re*
 19 *23andMe*, ECF No. 3 at 3-5; *id.*, ECF No. 19 at 6; *id.*, ECF No. 22 at 4-5. Members of the SSL
 20 Slate engaged in substantial pre-suit investigation, delving into (among other things) 23andMe’s
 21 services, data security practices, and response to the data breach incident; the applicable
 22 contractual terms; and the scope and potential harms resulting from the breach. Members of the
 23 SSL Slate have also consulted with thousands of affected individuals. *See id.* Through these
 24 concerted efforts, the SSL Slate has demonstrated its significant investment in the case,

25 “expeditious and substantial class settlement” in a complex action “benefit[ted] all concerned”).
 26 And, as shown from the long list of successful results the members of the SSL Slate have obtained
 27 for their clients and class members, there should be no question that the SSL Slate will always
 28 negotiate with the best interests of Plaintiffs and the Proposed Classes in mind—no matter when
 in the litigation those negotiations are held.

consistently prioritizing the interests of Plaintiffs and Proposed Class Members at every turn.

Finally, a substantial portion of the Proposed Classes—and their counsel—have already demonstrated their trust in the SSL Slate. Thousands of individual victims have retained the attorneys and firms represented in the SSL Slate, a testament to the trust placed that Proposed Class Members have in them. *See In re 23andMe*, ECF No. 3 at 3. Further, the SSL Slate has the support of counsel in several cases in this consolidated proceeding demonstrating the trust placed in them and their ability to work collaboratively with co-counsel.³

Accordingly, the Movant Plaintiffs request that the Court appoint Norman E. Siegel, Sabita S. Soneji, and Cari Campen Laufenberg as Interim Co-Lead Counsel and Mr. Siegel as Settlement Counsel.

Date: April 25, 2024

/s/ Cari Campen Laufenberg

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³ *Santana v. 23andMe, Inc.*, No. 3:23-CV-05147 (N.D. Cal.); *Mirza v. 23andMe, Inc.*, No. 3:23-CV-05259 (N.D. Cal.); *Hu v. 23andMe, Inc.*, No. 3:23-CV-17079 (N.D. Ill.); *Greenberg v. 23andMe, Inc.*, No. 3:23-CV-05302 (N.D. Cal.); *MacMillan v. 23andMe, Inc.*, No. 3:23-CV-0555 (N.D. Cal.); *Dube v. 23andMe, Inc.*, No. 3:23-CV-05768 (N.D. Cal.); *J.S. v. 23andMe, Inc.*, No. 3:23-CV-05234 (N.D. Cal.).

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Cari Campen Laufenberg, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of April, 2024, at Seattle, Washington.

/s/ Cari Campen Laufenberg

Cari Campen Laufenberg

CERTIFICATE OF SERVICE

I, Sarah Skaggs, hereby certify that on April 25, 2024, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Sarah Skaggs
Sarah Skaggs